



## CALIFORNIA COASTAL COMMISSION

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# W-9a

April 10, 2002

### **REVISED REPORT**

TO: Coastal Commissioners and Interested Public

FROM: Peter M. Douglas, Executive Director  
Sarah Christie, Legislative Coordinator

SUBJECT: LEGISLATIVE REPORT FOR APRIL 2002

CONTENTS: This report provides summaries and status of bills that affect the Coastal Commission and California's Coastal Program as well as bills that staff has identified as coastal related legislation.

Note: This information can be accessed through the Commission's World Wide Web Homepage at [www.coastal.ca.gov](http://www.coastal.ca.gov)

Please contact Sarah Christie, Legislative Coordinator, at (916) 445-6067 with any questions on the material contained in this report.

## PRIORITY LEGISLATION

### **AB 985 (Florez) Fully Protected Species**

This is a spot bill relating to the Fully Protected Species Act. The author intends to hold public hearings and workshops this summer before submitting final language.

Introduced	02/23/01
Last Amended	08/29/01
Status	Passed Assm. WP&W Committee, Passed Assm. Appropriations Committee, Passed Assembly Floor, Referred to Sen. NR&W

### **AB 1145 (Jackson) Regional Open Space District: County of Ventura**

This bill would allow the Ventura County Board of Supervisors to form a regional open space district by way of resolution, and to place the formation of the district on a ballot within the county of Ventura.

Introduced	02/23/01
Last Amended	01/24/02
Status	Passed Assm. Local Government Committee, Passed Assm. Floor, Referred to Senate Local Government

### **AB 1172 (Keeley) Natural Community Conservation Planning**

This bill would require the Department of Fish and Game, in three-year intervals, to prepare and submit to the Legislature a report on the functioning and effectiveness of the NCCP Act. The report would include an evaluation of the functioning and effectiveness of the program, an inventory of NCCP plans underway or in the process of review, and the science being utilized in the preparation of those plans.

Introduced	02/23/01
Status	Passed WP&W Committee, Passed Assm. Appropriations, Passed Assembly, Referred to Sen. NR&W Committee

Introduced	02/23/01
Status	Passed N.R.&W. Committee, Passed Senate Floor, Passed Assm. Natural Resources Committee, On Assembly Floor, To Assm. Floor Inactive File

### **AB 1797 (Morrow) Coastal Zone Boundary Change**

This bill would amend Section 30170 of the Coastal Act to remove a 13.5 acre parcel of land known as the Hieatt property within the City of Carlsbad from the Coastal zone.

Introduced	01/22/02
Status	Referred to NR&W Committee.

**AB 1866 (Wright) Housing Density Bonuses**

This bill requires that the housing ordinance provide for ministerial approval without discretionary review of applications for 2nd units that meet the requirements of the ordinance, notwithstanding other laws that regulate the issuance of variance, special use, or conditional use permits. Adds criteria for continued affordability of housing in a common interest development. Specifies that the provisions would apply to counties/cities within the coastal zone.

Introduced 01/31/02

Status Referred to Assm. Housing & Community Development and Local Government

**AB 1913 (Lowenthal) Notice of Violation Act**

This bill permits the California Coastal Commission to file violation notice if determined that real property has been developed in violation of the Coastal Act. It requires public hearing if the owner submits timely objection, and requires issuance of clearance letter to owner if no violation occurred; requires timely notice of decision with county recorder if violation no longer valid. (Analysis and Bill attached.)

Introduced 02/08/02

Status Referred to Assm. Natural Resources

**AB 1925 (Nakano) California Storm Water**

This bill declares that it is the intent of the Legislature to enact subsequent legislation to make available \$30,000,000 of funds to the California Ocean Trust, for allocation to the California Sea Grant Program for the purpose of carrying out a grant program to fund storm water-related research.

Introduced 02/12/02

**AB 1940 (Matthews) Land Use: Lot Line Adjustments**

Current law limits lot line adjustments to four or fewer adjacent, adjoining parcels. This bill would eliminate the requirement that those parcels be adjoining, allowing for adjustments between non-contiguous lot.

Introduced 02/14/02

Status Referred to Local Government Committee

**AB 2083 (Jackson) Oil Spill Prevention and Response**

This bill would require the State Lands Commission to develop a form that is to be completed by any operator engaged in the tankering of oil offshore California. The form would provide information, available to the public and state agencies, that would track the type of oil transported, its origin, destination, as well as the method, path and amount of emissions involved in the transport.

Introduced 02/19/02

Status Referred to Assm. Natural Resources Committee

**AB 2158 (Lowenthal) Coastal Development Permits: Housing**

This bill would require the California Coastal Commission to take appropriate steps to ensure that all coastal development permit conditions relating to affordable housing are enforced and do not expire during the term of the permit.

Introduced 02/20/02

Status Referred to Assm. Natural Resources Committee

**AB 2162 (Negrete-McLeod) Vehicles: License Plates**

This bill would eliminate the provision authorizing the appropriation of the balance of the Coastal Enhancement Account to the Coastal Conservancy, and specifies that the other half of the funds available from the Whale Tail license plates be deposited in the License Plate Coastal Access Account, for grants to local governments and non-profits to open and maintain public accessways to the coast.

Introduced 02/20/02  
Status Referred to Assm. Transportation Committee

**AB 2190 (Campbell) Crystal Cove State Park**

This bill would require the Department of Parks and Recreation to re-evaluate the property values at the El Morro Mobile Home Park, and increase the rents accordingly. It would require that any additional revenue resulting from the increase be deposited into a special fund to support cottage restoration and Crystal Cove, and would allow willing tenants to extend their contracts by 5 years. (Analysis and Bill attached.)

Introduced 01/07/02  
Status Referred to W.P.&W. Committee.

**AB 2631 (Matthews) Resources**

Repeals the requirement for the Department of Parks and Recreation (DPR) to produce an annual report to the Governor and the Legislature, recommending acquisitions for the establishment of or additions to state seashores, hostel facilities and recreational trails.

Introduced 02/22/02  
Status Referred to Assm. Natural Resources Committee and WP&W Committee

**AB 2727 (Keeley) State Coastal Conservancy**

This bill would remove the restrictions on the percentage of funds that the Conservancy can contribute toward a coastal acquisition, clarify that acquisitions can be made in connection with a public access project, and deletes the provision in existing law which requires the Department of General Services to dispose of real property held by the Conservancy for more than 10 years at fair market value. This bill would require the Department to consult with the Conservancy to determine the appropriate terms of disposal.

Introduced 02/22/02  
Status Referred to Assm. Natural Resources Committee

**AB 2943 (Wiggins) Coastal Commission**

This bill would require the commission to forward a copy of the evidence of any recordation to dedicate real property for public access to the Resources Agency. Current law requires the Commission only to forward said information to Parks and Recreation, the State Coastal Conservancy, and the State Lands Commission.

Introduced 02/25/02  
Status Referred to Assm. Natural Resources Committee

**SB 116 (Kuehl) State Parks: roads, construction and improvement**

This bill would prohibit the construction of roads by any state or local agency through a state park, unless certain findings are made.

Introduced 01/24/01  
Last Amended 03/20/01  
Status Passed N.R. & W. Committee, Passed Senate Appropriations, Passed Senate Floor,  
Held in Assm. WP&W Committee

### **SB 1164 (Sher) Local Coastal Programs: Costs**

This bill would amend Section 30353 of the Public Resources Code to allow local governments to recover from the state costs incurred as a result of defending local actions pursuant to local coastal programs prior to the rendering of judgement if the Attorney General has intervened in support of the local government's position and the amount paid does not exceed \$500,000. Local governments would repay the state from any costs recovered as a result of final judgement. The bill would require the Director of the Commission, in consultation with the Attorney General, to establish procedures for the payment of litigation costs.

Introduced	02/23/01
Status	Assm. Inactive file

### **SB 995 (Morrow) Vessels: Special-Use Areas**

This bill would prohibit state or local entities relating to personal watercraft from adopting any ordinance, law, regulation, or rule that would allow special use areas to be used in a manner that interferes with boating access to channels, shipping lanes, or international waters.

Introduced	02/23/01
Status	Failed to pass out of Senate

## SB 1508 (Scott) Santa Monica Mountains Conservancy: Members

This bill would increase the number of ex-officio nonvoting members of the Santa Monica Mountains Conservancy from two to three, by including the Supervisor of Los Angeles National Forest among those members.

Introduced	02/19/02
Status	Referred to NR&W Committee

### **SB 1525 (Sher) Transgenic Species**

This bill would make it unlawful to import, transport, possess or release any live transgenic (genetically modified) fish or roe into the waters of California.

Introduced	02/20/02
Status	Referred to NR&W Committee

**SB 1573 (Karnette) Interagency Aquatic Invasive Species Council**

This bill would establish the Interagency Invasive Species Council, using existing staff and funds within the Department of Fish and Game, and require the Council to establish a comprehensive plan for dealing with invasive species in California.

Introduced	02/22/02
Status	Referred to NR&W Committee

## SB 1797 (Morrow) Coastal Zone Boundary: San Diego County

This bill would exclude additional areas in the City of Carlsbad from the coastal zone.

Introduced	02/22/02
Status	Referred to NR&W Committee

**SB 1916 (Figueroa) Local Coastal Programs: Nonpoint Source Pollution**

This bill would require every local coastal government with a certified local coastal program, after consultation with the appropriate regional water quality control board, to prepare and adopt for certification by the California Coastal Commission, a nonpoint source pollution prevention element for inclusion in its certified local coastal program, when coming to the Commission for a major amendment. (Analysis and Bill attached.)

Introduced 02/22/02  
Status Referred to NR&W Committee

**SB 1962 (Polanco) State Coastal Conservation: Coastal Access**

This bill would require the State Coastal Conservancy to accept any outstanding offers to dedicate public accessways that have not been accepted by a local government or nonprofit organization within 90 days of their expiration date. It would also require the conservancy to open at least 3 public accessways each year, and prepare an annual report to the Legislature pertaining to public access. (Analysis and Bill attached.)

Introduced 02/22/02  
Status Referred to NR&W Committee

**SB 1966 (Murray) Development Projects**

This bill would require any non-profit group or government agency to make nexus findings and complete an environmental impact report prior to accepting any offer to dedicate (OTD) real property for public improvement. (Analysis and Bill attached.)

Introduced 02/22/02  
Status First Reading

**BILL ANALYSIS; AB 1913 (Lowenthal)****SPONSOR**

CalPIRG

**SUMMARY**

This bill would add Section 30812 of the Coastal Act, to allow the Executive Director of the California Coastal Commission to file a notice of violation if the Commission determines that development of real property has taken place in violation of the Act. The bill sets forth a public process for appealing the violation determination, and requires the director to notify the county recorder where the NOVA has been filed once the violation has been remediated.

**PURPOSE OF THE BILL**

The purpose of this bill is to assure that potential purchasers are notified that an unresolved violation of the Coastal Act is present on the property, and to provide an additional tool for motivating landowners to resolve difficult enforcement cases.

**ANALYSIS**

The Commission's enforcement division currently has over 700 open enforcement cases. The process for resolving an enforcement case is:

- Identify that a violation (e.g. unpermitted development) has occurred
- Notify the property owner that he/she must apply for either an after-the-fact (ATF) permit authorizing the development, or a permit to remove the development and restore the property.
- Hold a public hearing on the permit application.
- Property owner must comply with the terms of the permit as issued.
- If owner refuses to apply for a permit or refuses to comply with the terms of the approved ATF or restoration permit, the Commission issues a restoration order or a cease and desist order as appropriate.
- If they refuse to comply with that order, the commission may initiate litigation.

The vast majority of Coastal Act violations are resolved with an ATF permit or a permit for restoration. However, in those instances where property owners are unwilling to resolve the unpermitted development issues, the Commission's only options are cease and desist orders, restoration orders, or litigation. The ability of the Commission to file a NOVA would add an incentive for property owners to comply with the law. Litigation is costly and resource intensive. Filing a NOVA is a cost-effective way of increasing Coastal Act compliance.

Existing statutes do not expressly require sellers of property to disclose Coastal Act violations, and sellers' legal obligation to do so is subject to dispute. This lack of a clear disclosure mechanism burdens innocent buyers with the responsibility of resolving coastal act violations of which they had no prior knowledge. The recordation of a NOVA could allow the buyer to require resolution of the violation prior to sale, negotiate a lower price to offset the cost of addressing the problem after close of escrow, or provide an incentive for the seller to take care of the violation prior to listing. All of these options would result in a higher rate of coastal act compliance.

AB 1913 would authorize the executive director of the Coastal Commission to record a notice of violation of the Coastal Act after first providing notice to the property owner if s/he determines that real property has been developed in violation of the act. If the owner submits an objection to the filing of the notice of violation, a public hearing would be required. If the Commission determined that no violation has occurred, the executive director would issue a clearance letter to the property owner. If the Commission determined that a violation has occurred, the NOVA would then be recorded. Once the violation has been resolved, the bill would require the executive director to record a notice of rescission with the county recorder within 30 days of determination of the violation, indicating that the notice of violation is no longer valid.

If the Commission does find a violation, notice of the violation would be recorded with the local county recorder.

### **LEGISLATIVE HISTORY**

This is a reintroduction of AB 989 (Lowenthal), which was vetoed by the Governor. That bill, in turn, was a reintroduction of AB 1956 (Knox) from 1998, which was vetoed by the previous Governor.

### **PROGRAM BACKGROUND**

The Commission used to issue NOVAs until the mid-1990s, when an informal opinion from the Attorney General's office, stemming from an enforcement case which had gone to court, advised the Commission that staff members may be held individually liable for recording NOVAs without specific statutory authority.

### **SUPPORT/OPPOSITION**

Support:

Opposition:

### **RECOMMENDED POSITION**

Staff recommends the Commission **Support** AB 1913.

### **LEGISLATIVE STAFF CONTACT**

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## **BILL ANALYSIS; AB 2190 (Campbell)**

### **SUMMARY**

AB 2190 would require the Department of Parks and Recreation to evaluate the market value of rental property within the El Morro mobile home park located in Crystal Cove State Park and to adjust the rents accordingly. It would require that any additional revenue collected as a consequence of the price adjustment be placed into an account and used for the maintenance and preservation of the Crystal Cove Cottage Historic District located in Crystal Cove State Park.

### **PURPOSE OF THE BILL**

The purpose of the bill is to extend the lease for any owner of a mobile home located in El Morro mobile home park by 5 years, while adjusting the rents according to current market values for rental property within the region. If there is any increased revenue due to rental adjustments, those funds will be applied to the preservation and upkeep of the cottages located within the park.

### **EXISTING LAW**

Under Sections 5060-5067 of the Public Resources Code, existing law authorizes the Department of Parks and Recreation to enter into contracts with individuals and/or other governmental agencies or departments for the lease of state lands, for park and recreational purposes and for the development and expansion of park and recreational areas, on such terms and subject to such conditions as the department may determine. No lease entertained by the department is to be less than 2 years, nor greater than 20 years, however the State may terminate any rental contract at its discretion at the end of any 2-year period.

Additionally, all lands leased are administered as part of the California State Park system, subject to existing laws affecting the operation and maintenance of state parks.

From the lease of these lands, the department is authorized to collect fees, rents and other returns in amounts compatible with the appraised value of the land.

### **PROGRAM BACKGROUND**

Crystal Cove State Park consists of 3.2 miles of coastline and coastal terrace between the cities of Laguna Beach and Corona del Mar, including a sandy beach and coastal bluff. It was purchased by the State in 1979 from the Irvine Company for use as a state park. Two level accessways to Crystal Cove State Beach exist at the 'Historic District' and at 'El Morro Trailer Park'. The Historic District is the site of 46 unoccupied beachfront cottages, recognized by the National register of Historic Places as rare examples of an early Southern California Beach Colony. The El Morro accessway is not accessible to the public, as it is behind a guard gate.

Last year, State Parks terminated a lease agreement to develop a luxury resort at the site and is now in the process of updating a 1982 General Plan for the area which will include restoration of the cottages and the provision of low to moderate overnight visitor accommodations. The Commission has signed an MOU with State Parks, transferring a \$2.8 million "in lieu fee" account for the purpose of renovating some of the cottages for affordable overnight use.

The El Morro Mobile Home Park is a 294-unit manufactured housing area located on the beach and upland terrace at the southern end of the park. When the land was purchased by the State, the tenants of El Morro Trailer Park were on month-to-month leases. Over the years, the tenants received long-term lease extensions of 5 and 20 years. In 1999 the tenants were granted a final 5 year extension in 1999 in exchange for waiving relocation fees, and all the leases are now set to expire in 2004. When all tenants are vacated, DPR intends to implement the Park Master Plan and convert the trailer park to campgrounds, picnic areas and other State Park amenities. Currently, State Parks has \$13 million reserved for the creation of the campsites.

## **ANALYSIS**

AB 2190 is intended to extend the leases of the trailer park tenants, raise the rents from below market rates (\$400-\$800 per month) and allocate the difference to restoring the cottages in the Historic District.

However, extension of the El Morro trailer park leases would have several negative consequences on coastal resource and land management such as:

- Delaying the public's ability to use El Morro as public parkland.
- Continuing a public subsidy for all beachfront residents.
- Allowing the continued degradation of cultural resources found in the area.
- Preventing the restoration of a relatively unaltered watershed. El Morro Creek drains directly into a state-designated Area of Special Biological Significance.
- Allowing for the potential loss of \$1 million in State Funds already spent on design and planning studies for the restoration/campground.
- Forcing the reallocation of State Park Bond funds (~ \$9 million) initially meant for the El Morro Restoration Project.
- The funding mechanism proposed by AB 2190 is not protected. Fiscal crises could eventually force the reallocation of future rental incomes away from the Historic District, and possibly out of the 70<sup>th</sup> District.

With \$2.8 million in funding by the Coastal Commission, and some portion of \$300 million for historic preservation available from Proposition 40, it is likely that the Crystal Cove cottage restoration project could receive sufficient funding without this bill, without jeopardizing public access to the cove. Extending the El Morro leases, thereby delaying implementation of the long awaited 1982 general plan, would have the consequence of ensuring that parts of the State Park, including parts of the shoreline, remain inaccessible to the general public.

## **SUPPORT/OPPOSITION**

### **Support for 2190**

**El Morro Village Community Association**

### **Opposition to 2190**

Alliance to Rescue Crystal Cove  
California Coastal Protection Network  
League for Coastal Protection  
Vote the Coast

## **RECOMMENDED POSITION**

Staff recommends the Commission **Oppose** AB 2190.

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## **BILL ANALYSIS; SB 1916 (Figueroa)**

### **SUMMARY**

SB 1916 would require every local coastal government with a certified local coastal program (LCP), after consultation with the appropriate regional water quality control board, to prepare and adopt for certification by the California Coastal Commission, a non-point source pollution prevention element within its certified local coastal program when preparing an LCP or major LCP amendment for certification by the Commission. The bill would also require the Commission to assist local governments in securing funding to defray the costs associated with the preparation of that element.

### **PURPOSE OF THE BILL**

The purpose of the bill is to improve coastal water quality by reducing nonpoint source pollution.

### **EXISTING LAW**

Under Section 30231 of the Coastal Act, the Coastal Commission is required to protect, and where feasible, restore, the biological productivity of coastal waters by minimizing the adverse effects of runoff.

The U.S. Environmental Protection Agency (U.S. EPA) is primarily responsible for water quality regulation and enforcement. However, much of the implementation of the federally mandated water quality control programs is delegated to the State Water Resources Control Board (SWRCB), which also administers the state's independent body of water quality law, the Porter-Cologne Act.

### **PROGRAM BACKGROUND**

The California Coastal Act requires local governments within the coastal zone to prepare Local Coastal Programs (LCP) to implement the goals and policies of the Act locally. These LCPs plan for and regulate new development.

In July of 1999, the Coastal Commission and the SWRCB jointly released a draft nonpoint source program entitled California's Nonpoint Source Pollution Control Program. California was the first state in the nation to gain federal approval for both segments of the plan as mandated under the Clean Water Act Section 319.

The plan identifies a number of program goals related to the implementation of 61 specific management measures aimed at reducing nonpoint source pollution and improving water quality by 2013. The management measures focus on measures that are technologically and economically feasible, and encourages partnerships with agencies and individuals that must be involved in implementation of management measures.

The Commission also independently promotes the use of best management practices (BMPs) that are effective at mitigating the impacts of nonpoint source pollution for development when issuing coastal development permits.

### **ANALYSIS**

Nonpoint source pollution is the single greatest contributor to degraded water quality in the state of California. As point sources such as sewage outfalls are increasingly regulated, the adverse impacts of nonpoint source pollution, including runoff from urban development, agriculture, streets and highways, are more readily appreciated.

"Testing the Waters," a study published by the Natural Resources Defense Council (NRDC) estimates that in 2000, 5,780 beaches were closed for an average of at least three days due largely in part to increased marine



## **BILL ANALYSIS: SB 1962 (Polanco)**

### **SUMMARY**

This bill would require the State Coastal Conservancy to accept any outstanding offers to dedicate (OTD) public access that have not been accepted by a local government or nonprofit organization within 90 days of their expiration date. It would also require the Conservancy to open at least 3 public accessways each year, either directly, or by awarding grants to local governments or non-profit organizations.

### **PURPOSE OF THE BILL**

The goal of this bill is to prevent any outstanding OTDs from expiring, and to improve public access to and along the coast.

### **BACKGROUND**

From 1976 until the Nolan decision in 1987, the Commission regularly required offers to dedicate public access to and along the coast as conditions to coastal development permits. To date, the Commission has required 1,336 OTDs to be recorded statewide. Of these, 123 OTDs provide vertical access to the beach from an inland location.

OTDs must first be accepted by a government agency or non-profit organization before they can actually be opened for use by the public. The time period for acceptance varies, but generally runs between 20-30 years. If the OTD does not get accepted within that time frame, it expires and is lost to the public. Currently, 786 OTDs have been accepted, and 650 remain at large. Fifty-eight of these are vertical OTDs.

In 1987, *Nolan v. California Coastal Commission* required that regulatory agencies must show a nexus between exactions imposed and the problems solved by that exaction. This reduced the number of OTDs required by the Commission in subsequent permits, but did not eliminate them. Consequently, the majority of pre-Nolan OTDs are at or nearing their expiration dates.

In 1996 and 1999, the Coastal Commission and Coastal Conservancy entered into memoranda of understanding (MOU) to assure that no OTDs would expire for lack of an entity to accept them. These MOUs established an inter-agency action plan that included the Conservancy initiating an acceptance process for all OTDs within 24 months of expiring. However, the Conservancy Board still retains the discretion to accept or reject OTDs. In November, 2001, the Board rejected a vertical OTD in Mendocino County that has since expired. In December of 2001, the Board adopted policies outlining the process and criteria by which OTDs would be evaluated for acceptance.

### **ANALYSIS**

Sections 30530-30534 of the Coastal Act direct the Commission to carry out a public access program, in cooperation with the Conservancy and consistent with the provisions of Chapter 9 of Division 21 of the Public Resources Code.

The Coastal Conservancy has the authority to accept the dedication of interests in land, including interests required to provide public access to recreation and resource areas in the coastal zone.

Public access to the coast, while mandated by the Coastal Act and broadly supported by the general public, continues to be controversial at the micro-local level. Many property owners and some neighborhoods actively oppose the acceptance and/or opening of OTDs on their property. The greater the controversy, the more difficult it is to find an entity willing to accept OTDs. Because the Conservancy still retains discretion over whether or not to accept OTDs as an agency of last resort, it is likely that they will continue to be targeted by anti-access entities hoping to scuttle the acceptance of OTDs on the brink of expiration.

This bill would eliminate the chilling effect of property owners threatening legal action against the state in an to prevent OTD acceptance. This will facilitate and streamline the acceptance process, saving staff time now spent on feasibility analysis, legality and technical issues surrounding individual OTDs.

Some OTDs may have technical or legal issues that prevent them from being opened at this time. But these issues should not preclude their *acceptance*. As technologies improve and legal interpretations and political wills change, OTDs that may not seem feasible today may one day become useful and even vital links in the Coastal Trail. A state policy of accepting all OTDs eliminates the possibility that the state may have to purchase easements at a later date in order to provide adequate public access.

This bill would also require the Conservancy to open or facilitate the opening of at least 3 OTDs per year, and to prepare an annual report to the Legislature on its progress. Requiring a minimum number of OTDs to be opened every year will ensure that OTDs do not languish undeveloped, once accepted. The bill does not prioritize which OTDs should be developed.

#### **LEGISLATIVE HISTORY**

No legislative history.

#### **FISCAL IMPACT**

This will save state and Conservancy legal fees, as it removes ambiguity about the discretionary nature of the Conservancy's actions to accept OTDs.

#### **SUPPORT/OPPOSITION**

Support:

Opposition:

#### **RECOMMENDED POSITION**

Staff recommends the Commission **support** SB 1962.

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## **BILL ANALYSIS; SB 1966 (Murray)**

### **SUMMARY**

This bill would require government agencies and non-profit organizations to make a finding of nexus between the impacts and the benefits of the public use of the property, and to produce an environmental impact report (EIR) before accepting any offers to dedicate (OTD) private property for public use.

### **PURPOSE OF THE BILL**

The purpose of this bill is to require environmental review and a nexus evaluation prior to acceptance of an OTD. The bill is sponsored by the Hollister Ranch Homeowners Association.

### **BACKGROUND**

From 1976 until 1987, the Commission regularly required offers to dedicate public access to and along the coast as conditions to coastal development permits to mitigate the impacts of private development on public access. These OTDs must first be accepted by a government agency or non-profit organization before they can actually be opened for use by the public. The time period for acceptance generally runs for 21 years. If an OTD does not get accepted within that time, it expires and its potential for public use is lost.

In 1987, Nollan v. California Coastal Commission required that regulatory agencies must show a nexus between exactions imposed and public benefit resulting from those exactions. This decision reduced the number of instances in which OTDs were required by the Commission in subsequent permits, but did not eliminate them. Post-Nollan OTDs have either been required after making a nexus finding, or they have been recorded voluntarily by applicants. Nollan did not require the Commission to revisit OTDs that had already been recorded pursuant to previous permit conditions.

Prior to opening any OTD operated by a non-profit for public use, the Commission and the Conservancy review and approve management plans that include measures to address sensitive habitat, wildlife issues, hours of operation, physical improvements, signing and maintenance.

While most of the public attention has been focused on public access OTDs, the Commission routinely requires offers to dedicate agricultural easements, scenic easements, conservation easements and open space easements. Like access OTDs, these must also be accepted by a third party before becoming permanent.

### **ANALYSIS**

The effect of this bill would be to reopen hundreds of permits that have already been decided upon, in order to make findings of nexus. There are currently 650 outstanding public access OTDs statewide and an undetermined number of non-access OTDs. An OTD is just one part of a complex permit action and cannot be viewed in isolation. To revisit the nexus question on OTDs that were recorded as permit conditions for projects that were built over 20 years ago would require data and information no longer available. In many instances, outstanding OTDs were recorded by previous owners who have already enjoyed the full benefit of their coastal development permits.

Re-analyzing every one of the permits would not only be impossible on a practical level, it would go against the general judicial principle that new Supreme Court decisions do not apply retroactively to already final administrative and judicial decisions.

It is not clear in the bill what entity would be responsible for making the retroactive nexus findings. Generally speaking, non-profit organizations do not make nexus findings. This exercise is reserved for quasi-judicial bodies. If the entity accepting the OTD would be responsible for making such findings, the exercise would likely be so laborious and controversial that no entity would willingly take on the task. If it is the Commission that would be responsible for such findings, this would impose an essentially unmanageable new duty on the Commission and staff.

It is also unclear what, if any, remedy exists for a party that disagrees with the nexus findings. Making nexus findings decades after the fact is inconsistent with well-established legal precedent relating to when agency actions must be challenged. In general, actions must be challenged in a timely manner, or the statute of limitation prevents re-opening of the matter. The effect of this bill would be to re-open and re-evaluate all of those permits issued decades ago that have been assumed to be closed. This would be a dramatic departure from the normal method of challenging administrative actions, and would likely result in costly and protracted litigation.

On the other hand, OTDs recorded *after* the Nollan decision have either already met the nexus test, or they have been recorded voluntarily by applicants and therefore no nexus finding is necessary. If an applicant agrees voluntarily to record an OTD that would not otherwise be required, subsequent owners are bound by that decision.

The bill would also require the preparation of an EIR prior to any OTD acceptance. This would impose additional costs on agencies and NGOs, and create a significant conflict between the California Environmental Quality Act and the Coastal Act.

Environmental Impact Reports are prepared pursuant to the California Environmental Quality Act. Actions and activities that are categorically exempt from CEQA provisions are identified in Sections 15300-15330 of the CEQA Guidelines. Section 15313 includes “preserving access to public lands and water...” Section 15317 includes “open space contracts or easements.” Every public entity that has accepted any of the more than 600 OTDs now in public ownership has made a finding that the action of accepting an OTD is exempt from CEQA.

Even if the acceptance of an OTD were not categorically exempt from CEQA, the coastal development permit process that created OTDs is already a CEQA equivalent process. The findings contained in the staff report and adopted by the Commission, relating to the development, its impacts, alternatives and mitigation meet the legal requirement for environmental review. Thus, the Commission has already done the required analysis of the development, including the impact of any conditions imposed, at the time the permit was issued. It is redundant to require an EIR for acceptance of an easement that has already met the provisions of CEQA.



Under existing practice, prior to opening any OTD, non-profit groups must prepare a management plan detailing how habitat will be protected and/or restored, how public use will be balanced with specific wildlife requirements, hours/seasons of operation, etc. Any physical construction necessary to open the OTD (e.g. stairs, boardwalk, trails, parking, etc.) requires a subsequent coastal development permit. Thus, any environmental impacts are already addressed through the preparation of the management plan and subsequent permits.

In conclusion, OTDs are required to make new development consistent with the Coastal Act. Requiring nexus findings and preparation of an EIR prior to acceptance would invariably result in fewer OTDs getting accepted, thereby undermining past Commission actions, reducing public access opportunities and thwarting the goals and policies of the state's coastal management program.

## **LEGISLATIVE HISTORY**

None.

## **ECONOMIC IMPACT**

This bill would have a negative economic impact of an unknown amount on agencies and organizations that accept OTDs. An EIR can cost between \$20,000 and \$500,000, depending on the complexity of the issues. The cost of re-analyzing old permit decisions is unknown. The probable effect of this bill is that those entities would be discouraged from accepting OTDs because of the costs involved. This could have a negative impact on coastal tourist economies.

## **SUPPORT/OPPOSITION**

Support:

Opposition:

Sierra Club

## **RECOMMENDED POSITION**

Staff recommends the Commission **Oppose** SB 1966.

## **LEGISLATIVE STAFF CONTACT**

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